Miller Waste Mills, Inc., d/b/a RTP Company *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Case 18–CA–14021

February 20, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On October 1, 1996, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The Charging Party filed a brief in response to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the recommended Order[2] as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Miller Waste Mills, Inc., d/b/a RTP Company, Winona, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

"(c) Within 14 days after service by the Region, post at its Winona, Minnesota facility copies of the attached notice marked 'Appendix.' Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 16, 1996."

2. Substitute the following for paragraph 2(d).

"(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Local 2340, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as the exclusive representative of employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with Local 2340, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as the exclusive bargaining representative of our employees in the following appropriate unit:

> All production and maintenance employees of Miller Waste Mills, Inc., d/b/a RTP Company, excluding office and clerical employees, engineering department employees, draftspersons, laboratory employees, plant clerical employees and all guards and supervisors as defined by the National Labor Relations Act.

WE WILL reimburse Local 2340, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW for any dues we failed to check off and remit pursuant to the most recent collective-bargaining agreement with the Winona

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In agreeing with the judge that a bargaining order is necessary to remedy the Respondent's unlawful refusal to recognize and bargain with Local 2340, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, we find it unnecessary to rely on the judge's discussion of certain other conduct that was not alleged in the complaint as an unfair labor practice.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

We shall also substitute a new notice that conforms to the recommended Order.

Free Union following its affiliation action on February 11, 1996.

MILLER WASTE MILLS, INC., D/B/A RTP COMPANY

Karen Nygren Wallin and *Marlin O. Osthus, Esqs.*, for the General Counsel.
Lee A. Lastovich and *Edward J. Bohrer, Esqs. (Felhaber, Larson, Fenlon & Vogt, P.A.)*, of Minneapolis, Minnesota, for the Respondent.
William F. Garber, Esq. (Garber & Metcalf, P.A.), of Minneapolis, Minnesota, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. I heard this case at Minneapolis, Minnesota, on June 20 and 21, 1996. The charge was filed on April 16, 1996,[1] and the complaint issued on May 17, 1996.

The complaint alleges Miller Waste Mills (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), by failing and refusing to recognize and bargain with UAW Local 2340 (Local 2340). Respondent's timely answer avers that Local 2340 is not and has never been the exclusive bargaining representative of its employees. The dispute arises from an attempt by the Winona Free Union (WFU), an independent union that has represented Respondent's production and maintenance employees since 1984, to affiliate with the UAW and rename itself to reflect that affiliation.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file posthearing briefs. On the entire record, including my observation of the demeanor of the witnesses, and following my careful consideration of the briefs filed by the General Counsel, the Respondent, and the Charging Party, I conclude that Respondent engaged in the unfair labor practice alleged based on the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Minnesota corporation, manufactures thermoplastic molding compound at its facility in Winona, Minnesota, where it annually provides goods and services valued in excess of $50,000 directly to points outside the State of Minnesota. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find Local 2340 and its predecessor, WFU, to be labor organizations within the meaning of Section 2(5) of the Act.

[1] All dates are from July 1995 to June 1996 unless otherwise indicated.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The WFU Before February 1996*

Prior to 1984, Respondent's production and maintenance employees had been represented by the International Chemical Workers Union (ICWU). By 1984, a group of unit members became dissatisfied with the ICWU's representation and dues structure. These employees undertook to decertify the ICWU and replace that organization with the WFU, an independent labor organization they formed. Following a representation election in November 1984, the NLRB certified the WFU as the employee representative. Since 1984, the WFU has had an amicable and nonconfrontational relationship with Respondent, never processing a grievance to arbitration, and successfully negotiating several successive collective-bargaining agreements. The most recent contract, containing a dues-checkoff provision but no union-security clause, will expire on December 31, 1996. Before the affiliation vote, the WFU claimed 112 dues-paying members out of a bargaining unit of approximately 220 employees.

Employees Robert Kashuba and Jeffrey Serwa were instrumental in decertifying the ICWU and organizing the independent union. Thereafter, they remained active in WFU affairs. Thus, Kashuba helped organize the WFU in 1984, served as its first president, and held other offices for many years of its existence. Serwa became a WFU trustee in 1984, subsequently served as vice president and president, holding the latter office until 1994 when he became the WFU secretary-treasurer. As described below, both employees now play proactive roles in mustering opposition to the WFU's affiliation with the UAW.

Over the years, the WFU represented only Respondent's employees. Its organizational structure as established in its bylaws is relatively uncomplicated. Those bylaws establish an executive board elected by the membership consisting of three officers—president, vice president, and secretary-treasurer—and three trustees to conduct the WFU's business. Following the WFU's elections In 1994, its officers were: Mark Steuernagel, president; Brian Stremcha, vice president; and Serwa, secretary-treasurer. The three trustees elected in 1994 were: Barbara Vogel, Mike Lilla, and Jerry Severson. The bylaws provide for monthly membership meetings and a two-tiered dues structure, apparently based on a two-tiered wage structure.

B. *The Events Leading to Affiliation*

In the late spring or early summer of 1995, the WFU executive board began to consider affiliation with an International union. At the request of the executive board, WFU President Steuernagel contacted George Klingfus, a UAW Region 4 representative. Thereafter, executive board members met with Klingfus about 10 times between July 1995 and January 1996 to explore affiliation details. Steuernagel, Vice President Stremcha, and Trustees Vogel, Lilla, and Severson attended virtually all of the sessions with Klingfus. Although Serwa claims that he attended only one of these meetings with Klingfus, I find that Serwa, like the other executive board members, could have attended all of these

meetings if he had chosen to do so and, in any event, the others fully briefed him concerning those meetings which he did not attend.

Steuernagel concedes that the executive board maintained a shroud of secrecy over its meetings with Klingfus until the WFU's December meeting. Only five or six unit members other than the executive board attended the December meeting but that turnout was fairly typical for routine monthly meetings. The members in attendance agreed that a vote for affiliation with the UAW should be taken.[2] The executive board solicited volunteers to assist in the upcoming affiliation vote at a subsequent meeting, held on or about January 21. Although notices announcing the monthly meetings were posted, the WFU executive board usually did not announce or post a meeting agenda before its meetings. Thus, employees had no way of knowing that affiliation would be discussed at the December meeting and would only have known about the purpose of the January meeting by word of mouth. Serwa voiced no opposition to affiliation with the UAW until the January meeting.

On January 22, the executive board sent the following letter announcing the affiliation vote to all bargaining unit employees:

> Dear fellow employee
>
> You are hereby notified of a SPECIAL MEETING for the purpose of considering affiliation with International Union—(UAW).
>
> The meeting will be held at the Black Horse Bar & Restaurant. Sunday Feb. 11, 1996, starting at noon. Bring any questions you may have.
>
> At the end of the meeting, a secret ballot will be taken to decide weather [sic] to become affiliated with the UAW or remain with our own Winona Free Union. Please attend and make your vote count.
>
> WINONA FREE UNION
>
> Mark Steuerragel [sic] President — Brian Stremcha Vice President

A few days later a copy of this letter was also posted in the workplace. The affiliation meeting was scheduled for Sunday in order to provide an opportunity for the maintenance employees, who often work Saturdays in addition to weekdays, to attend.

Respondent became aware of the upcoming vote shortly after the mailing. As soon as he returned from an overseas trip in late January, Charles Wunderlich, Respondent's vice president and corporate secretary, summoned Steuernagel to a meeting in the conference room to discuss the letter. Also present at this meeting were Richard Kulas, Respondent's human resources director; Frank Wohlitz, Respondent's attorney; and Serwa. Steuernagel was asked about the WFU's involvement with the UAW but he downplayed his role in initiating the affiliation process.

On February 7, Respondent sent a letter signed by three members of the Miller family to all bargaining unit employees. In this letter, Respondent explained its opposition to the WFU's proposed affiliation with the UAW and warned that it would "challenge the legitimacy of the United Auto Workers International in Detroit as a properly certified bargaining agent" should affiliation be approved.

C. *The February 11 Affiliation Meeting*

Approximately 130 employees attended the special affiliation meeting. Although employees were not asked for identification until the ballots were distributed, Steuernagel testified that he was able to recognize most of the employees. All executive board members were present and, with the exception of Serwa who did not wish to give the impression that he supported affiliation, took seats at a table in front of the employee audience. Joining the executive board and Klingfus at the front table were Mike Krumholz, Phil Duffy, and Ben Hovel, presidents of UAW locals in Winona and the surrounding region.

The meeting itself occurred without incident. However, Kashuba and another employee, Ron Swartling, confronted Klingfus at the front table before the meeting began. Shortly after he arrived, Kashuba approached Klingfus and protested that the meeting was illegal. Klingfus responded, "I wouldn't be here if it weren't legal." As Kashuba continued to protest, complaining about the meeting being held on a Sunday and the presence of the UAW representatives, the conversation quickly became heated. WFU Trustee Vogel testified that Kashuba appeared to be "preaching" and not listening to either her or Klingfus. At some point, Kashuba was joined by Swartling who also challenged the legality of the meeting. According to Vogel, both Kashuba and Swartling used loud voices and were very angry. Finally, either Klingfus or Vogel told the employees to sit down and that if Kashuba continued to create a disturbance, he would be removed from the meeting.[3]

Sometime after Kashuba and Swartling had taken their seats, Steuernagel opened the meeting by introducing the affiliation topic and warning that employees who continued to be disruptive would be taken from the meeting. Steuernagel then introduced Klingfus who spoke for about an hour, discussing the key provisions of the affiliation agreement in some detail.[4] Although about six copies of the agreement may have been left on the front table for the employees' pe-

[2] Serwa now claims that discussion of the potential affiliation did not occur until after the December meeting had ended. However, even assuming that Serwa's testimony on this point is correct, I am unwilling to conclude that no employees were present for this discussion. In addition, I find Respondent's attempt to characterize the affiliation discussion at this time as a passing comment made over drinks has absolutely no support in the record.

[3] I credit Vogel's account of the Kashuba-Klingfus confrontation. While testifying, Kashuba left little doubt about his fierce opposition to the affiliation and his demeanor on the witness stand consistent with Vogel's account. Holubar, an ex-police officer, and Kauphusman also testified that they found Klingfus' behavior intimidating. I decline to credit this vague and unspecific testimony. Even assuming that Klingfus may have been emphatic in his response to Kashuba, I have concluded that he merely sought to promote an orderly and reasoned discussion. No other evidence indicates that Klingfus' conduct was other than business-like and it seems improbable that he appeared before the group about to vote on affiliation in order to bully them in any manner.

[4] Although Serwa claimed that he did not pay close attention to Klingfus at the February 11 meeting, he agreed that Klingfus fully discussed the terms he later saw posted in the plant.

rusal, it is not clear that any rank-and-file employees were made aware of this or read the agreement. Further, the updated constitution of the UAW was not printed until after the agreement was ratified. Following Klingfus' explanation of the agreement, he and the other UAW representatives took questions from the employees for about 45 minutes. Steuernagel called on employees who raised their hands, continuing to do so until no more hands were raised.[5] In all, about 20 to 25 employees asked questions of Klingfus.[6]

After Klingfus had exhausted the employees' questions, all of the UAW representatives left the meeting room. Steuernagel admitted the Reverend John Carrier to observe the balloting procedure and tally votes. As the employees waited in line to vote, they continued to discuss the affiliation in small groups.

The employees voted by secret ballot, one at a time, on a balcony above the meeting room. Two volunteer employees checked IDs and marked names off a master list as they gave each employee a ballot. Another pair of employees guarded the balcony to ensure that only one employee was in the balloting area at a time. Reverend Carrier stood in the balloting area to make sure each employee placed only one ballot in the ballot box. Each ballot read: "DO YOU WISH TO HAVE WINONA FREE UNION AFFILIATE WITH THE INTERNATIONAL UNION, UAW?" Two checkoff boxes were clearly marked "YES" and "NO."

One hundred and thirty employees cast ballots. After each employee had an opportunity to vote, Reverend Carrier opened the ballot box, removed the ballots one at a time and handed each ballot to the first of six volunteer employees seated nearby. That employee read the vote aloud and passed the ballot to the next employee, until the vote had been read aloud by all six employees. Reverend Carrier kept a running tally as the votes were read. After all the votes had been counted, Reverend Carrier's tally reflected 79 votes in favor of affiliation and 51 votes against. Before the meeting dispersed, Steuernagel, Vogel, and Severson signed the affiliation agreement on behalf of the WFU and Klingfus signed it on behalf of the UAW.[7] By its terms, the affiliation agreement became effective as of that date and was to be of permanent duration.

Some employees testified concerning their dissatisfaction with the affiliation process. Thus, Scott Holubar and Ed Kauphusman asserted that the content of the notice mislead them into believing that the February 11 meeting was only for the purpose of considering the affiliation question rather than accepting or rejecting affiliation. Each rely on the word "consideration" in the first paragraph and claim that the language construction there caused them to believe that affiliation would only be discussed at the meeting notwithstanding the notice's penultimate sentence, statements made during the course of the meeting itself, and the wording of the ballot. However, the two principal opponents of affiliation, Serwa and Kashuba did not appear to contend that the notice misled or confused them. Thus, Serwa conceded that he understood from the notice that an affiliation vote would be taken at the meeting. Moreover, both Kashuba and Serwa obviously understood the consequences of the February 11 vote and were upset with its outcome as well as the failure of all employees to vote.

D. *The Affiliation Agreement*

The agreement provided for "Miller Waste Mills" to be chartered as a separate UAW local union. The UAW issued the charter on March 22 and effectively served to designate the WFU as UAW Local 2340.[8] The agreement further provides that the newly chartered local union would retain control of the existing WFU treasury, subject to the UAW constitution and applicable laws. Moreover, the agreement requires the WFU to amend its bylaws, within a "suitable" time period, to conform to the UAW constitution. The agreement is silent with respect to the existing collective-bargaining agreement between Respondent and the WFU; it provides only that as future collective-bargaining agreements are "negotiated or renegotiated the Bargaining Agent will be set forth therein" as the newly established UAW local union. In fact, the new UAW local treats the collective-bargaining agreement as effective for the remainder of its term. In addition, the agreement is silent with respect to the officers of the new UAW local union but, as discussed below, the parties to the agreement obviously contemplated that the existing WFU officers would continue to serve in their respective capacities until regular elections were held under the revised governing documents of the new UAW local union.

The agreement provides for a two-step change in the existing WFU dues structure. Effective April 1996, the WFU agreed to adopt a dues schedule requiring each member to pay dues equal to 1 hour of straight time earnings per month. Beginning in January 1997, the dues rate is set to increase to 2-hour straight time earnings per month in accord with the UAW constitution. Under the agreement, the WFU receives 38 percent of dues collected from its members with the balance going to the UAW, a UAW strike insurance fund, and the UAW family education center.[9] The agreement waives UAW initiation fees for existing WFU members and provides that "new hires" would be charged an initiation fee established by the local union in accord with the UAW constitution. The agreement is silent with respect to the initiation fees applicable to the considerable number of existing employees who were not members of the WFU.

The UAW also agreed to provide continuing service and assistance to the WFU, including the services of the UAW's

[5] I do not credit Kashuba's testimony that Steuernagel saw his hand raised but refused to call on him. Considering the fact that Kashuba had confronted Klingfus before the meeting opened, I find it highly improbable that he would have sat by quietly in the face of such a snub.

[6] I do not credit Holubar's testimony that Klingfus told the employees that they would have 60 days in which to further consider affiliation. This testimony is uncorroborated and Holubar subsequently signed a petition circulated at a meeting convened by Kashuba on March 30, discussed infra, without any mention of this 60-day period by him or any other employee. Thus, Kashuba's minutes of the March 30 meeting give no indication that this matter was alluded to by any of those in attendance.

[7] Respondent never received a signed copy of the affiliation agreement.

[8] The executive board posted an notice at the plant on March 26, stating that the WFU was now affiliated with the UAW and would henceforth be known as UAW Local 2340.

[9] Under the UAW constitution, 10 percent of the dues allocation to the strike fund is rebated monthly to the local union so long as the net worth of the strike fund exceeds $550 million. (G.C. Exh. 7, p. 47.)

representatives, lawyers, research department, and arbitration services. Other provisions, not relevant to the instant dispute, cover the receipt of the UAW newspaper by WFU members, a mailing list of WFU members, access to the UAW family education center, and payment of per capita taxes to the AFL–CIO by the UAW.

E. *Postratification Events*

By letter of February 20, Klingfus advised Respondent about the result of the affiliation vote and wrote that a telephone call to arrange a meeting would be forthcoming. His efforts to make contact by telephone apparently proved unsuccessful. On March 26, Tom Schneider, the UAW subregional director in Bloomington, Minnesota, wrote Hugh Miller, Respondent's chief executive officer, to request a meeting. Miller responded on March 29 referring Schneider to Wunderlich and stating that Respondent would not meet with Schneider given the "uncertainty" involving the UAW and WFU. In an April 12 affidavit which was filed with a representation case petition filed by Respondent a few days later, Wunderlich stated that "management has advised the United Auto Workers that it does not recognize it as the bargaining representative of Miller Waste Mills employees, will not bargain with it, and will not negotiate with it for the adjustment of employee grievances." No evidence indicates that Respondent's position as stated in Wunderlich's affidavit has changed.

However, Wunderlich and Steuernagel met for a grievance hearing on February 16. Wunderlich asserts that Steuernagel claimed to represent the WFU on this occasion but Steuernagel claims that he was never asked what union he represented. Regardless, even the terms of the affiliation agreement clearly contemplated that the UAW would issue a charter in futuro and, as noted above, that did not occur until March 22.

Following the issuance of the UAW charter, the WFU officers, and trustees, with the exception of Serwa, assumed the same offices with UAW Local 2340. However, Steuernagel requested that Serwa continue as the secretary-treasurer but on or about March 23, Serwa informed Steuernagel that he would not serve on the executive board of a union affiliated with the UAW. At Steuernagel's request, Serwa transferred the union's financial records under his control to Steuernagel the following day. In April, Steuernagel appointed Patrick Berg to the secretary-treasurer's post and this appointment was confirmed by a vote of the members attending the union meeting on May 12. At that same meeting, the members approved the new constitution and bylaws of UAW Local 2340 and elected a member to the position of recording secretary, a separate office created under the new organic documents. Subsequently, one of the trustees resigned for unspecified reasons and a new trustee was elected at the following meeting.

After he admittedly declined to assume his former position with the newly chartered Local 2340, Serwa by letter of April 2 requested that the bank at which the WFU kept its account place a hold on the WFU's funds. Serwa made the request to prevent the executive board from creating a new account in the name of UAW Local 2340 as contemplated by the affiliation agreement. The bank froze the account on April 5. On April 19, Steuernagel was allowed to sign for the account and the hold was finally lifted on May 9.

In the meantime, a week after the February 11 meeting, an unsigned copy of the affiliation agreement was posted at the plant. For whatever reason, organized opposition did not fully take shape until more than a month later. On March 15, Kashuba distributed a letter to the employees in which he essentially conceded that the February 11 meeting was legal but argued that the advantages of an independent WFU outweighed affiliation with the UAW. Contradicting his testimony that he believed the vote to be whether to seek more information from the UAW, Kashuba's letter characterized the vote as determining "whether the employees of RTP and Miller Waste Mills wanted either the UAW or only the Winona Free Union to represent them." The core of Kashuba's complaint was that those voting lacked adequate information for this important decision.

Several days after distributing the March 15 letter, Kashuba presented a petition signed by himself and 13 other employees calling for a special WFU meeting on March 30 to "vote their preference of either the UAW or the Winona Free Union," citing the WFU constitution as authority for the request.[10] Kashuba's actions set in motion an exchange of letters, notices, and responses by Respondent, the executive board of the WFU, and a loose dissident group steered by Kashuba and Serwa.

Respondent sent a letter to employees on March 21 obviously intended to raise questions about the effect of the affiliation vote. The letter questioned the wisdom of allowing about a third of the bargaining unit to bind all 228 employees, raised the specter of a "take over" by the UAW, and encouraged the employees to cast their vote at the Kashuba meeting. The following day, Kashuba posted a notice announcing his meeting and the executive board responded with a notice that Kashuba's meeting was not authorized.

Kashuba conducted a meeting of dissident union members on March 30, advertising it as a WFU meeting.[11] Kashuba prepared minutes of this meeting. These minutes, given to Wunderlich shortly after the meeting, reported that the dissidents generally believed that the February 11 vote was not binding. The minutes show that a vote was taken, but do not state the precise subject of the vote. At the hearing, Respondent's witnesses gave different descriptions of the vote taken at this meeting. Scott Holubar believed the vote was "to petition the NLRB to reconsider a new vote; Serwa asserted that "[t]he vote was on whether to decertify the UAW"; and Kashuba testified that the vote was to determine "whether [the employees in attendance] were willing to join the UAW or remain with the Winona Free Union."[12] Regardless, the

[10] Under the WFU constitution and bylaws, special meetings could be called "upon request of 10 members to the President of the Union." This provision is ambiguous as to whether the president is actually required to call the special meeting requested.

[11] I find that this meeting was not authorized by Steuernagel and did not bear his imprimatur; rather, he simply told Kashuba that nothing prevented any group of employees from gathering together after working hours.

[12] Even if the subject matter of the vote was arguably certain, there appear to be other serious procedural defects surrounding the vote. Holubar testified that he joined the WFU by giving a form to Kashuba a week before the March 30 meeting in order to be able to vote with "Kashuba's group." Kashuba also testified that although absentee ballots were counted, they were only offered to employees who requested one from Kashuba.

minutes report that 71 voted for the WFU, 1 for the UAW, and 2 abstained. The tally included 17 absentee ballots collected earlier by Kashuba. The employees then signed a "petition for NLRB to certify what Union the Employees wish to have represent them." Within the next few days, Kashuba posted the results of the vote and gave a copy of the petition to Respondent.

Kashuba filed an unfair labor practice charge with the NLRB on April 8, alleging that the UAW violated Section 8(b)(1)(A) of the Act. Kashuba testified that this charge was still pending as of the date of the hearing. Local 2340 filed a petition to amend WFU's certification on April 10 to reflect its affiliation with the UAW. Respondent filed a representation petition—which it later withdrew—with the NLRB on April 16.

Krumholz sent a letter to employees on April 9, explaining that the affiliation vote was binding and describing some of the benefits of affiliation with the UAW. Kashuba distributed another position letter to employees on or about April 10 in response to Krumholz' letter. Between April 16 and May 2, Kashuba posted at least two more position statements claiming that the WFU continued to exist in its unaffiliated form and warning of a UAW takeover. Respondent sent all employees a letter on April 25 characterizing the position of the UAW and expressing its hope that the NLRB would order an immediate election.

Between May 7 through 29, a number of employees resigned from membership in either, or both, the UAW and the WFU.[13] The bulk of these resignations came on the heels of yet two more letters, both dated May 9. In its letter to employees, Respondent informed employees that the NLRB had declined to schedule an election and discouraged them from signing UAW membership cards. The executive board sent a letter to employees on the same day, stating that the NLRB had upheld the affiliation—apparently in reference to the General Counsel's decision to issue a complaint in this case—and asserting that Respondent was now required to bargain with Local 2340. Kashuba admitted that he encouraged employees to resign from Local 2340 to avoid paying higher dues.

In the months following the affiliation vote, Serwa had about five or six discussions with Wunderlich concerning the affiliation action. Although he was clearly evasive in his answers as to the subject of the discussions, he admitted asking Wunderlich for advice concerning the bank account and receiving a referral to an attorney. Kashuba regularly provided his letters and notices to Wunderlich and expressed to Wunderlich his opinion that the WFU was still the only certified bargaining agent.

Respondent additionally alleges that on at least one occasion, Patrick Berg, an officer of Local 2340, threatened Kauphusman, warning him that if he failed to support the affiliation, he would be "on the UAW's hit list." Kauphusman indicated that Berg was an officer of Local 2340 at the time so it is clear that this occurred well after the affiliation vote and would have had no influence on that question even though it might otherwise violate the Act. At the very least, this record is void of evidence that the affiliation was preceded by any pattern of conduct of this sort.

[13] Serwa claimed that he did not resign his post until he submitted his membership resignation on May 9. Be that as it may, Serwa made clear that he would not function as an officer on March 23 and was, in effect, relieved of all duties and obligations associated with that office either on that date or when a replacement was appointed the following month.

F. *The Contentions*

The General Counsel contends that the WFU properly affiliated with the UAW on February 11 and that Respondent has since refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act. Specifically, the General Counsel argues that the employees enjoyed adequate due-process safeguards, including sufficient notice, an adequate opportunity to consider the issues, and the opportunity to cast a secret ballot for ratification or rejection of the affiliation. Further, the General Counsel asserts that there is substantial continuity between the preaffiliation WFU and the postaffiliation Local 2340. The Charging Party's brief generally supports the General Counsel's contentions.

Respondent contends that it had a legitimate question concerning the representation of its employees following the February 11 affiliation meeting that justified its refusal to bargain with Local 2340. Respondent argues that its employees were denied due process as a result of misleading representations, threats, and manipulation emanating from the executive board, insufficient opportunity for open discussion, and a lack of information necessary to cast an informed vote. In addition, Respondent contends that the affiliation vote and subsequent events evidence a takeover that destroyed the continuity of representation. By subjecting itself to the UAW constitution, Respondent asserts that the WFU surrendered effective authority over critical functions, including the ability to order strikes, set dues, and otherwise control local union affairs. Respondent also makes a general argument that the affiliation is not now supported by a majority of the bargaining unit employees and that this indicates the lack of validity of the vote. Even if the affiliation was technically proper, Respondent argues that it was legitimately confused about the identity of the collective-bargaining representative for its employees, creating a valid question concerning representation.

G. *Further Findings and Conclusions*

1. *Seafirst* standard

The Board's power to intervene in affiliation cases is limited. The Supreme Court has recognized that "Congress has expressly declined to prescribe procedures for union decision making in matters such as affiliation." *NLRB v. Food & Commercial Workers Local 1182*, 475 U.S. 192, 204 fn. 11 (1986) (*Seafirst*). Because the Act's goals would be needlessly obstructed if every union organizational adjustment required recertification, the Board's authority to act is restricted to cases where affiliation raises a question of representation. Id. at 202–203.

In *Seafirst*, the Supreme Court resolved a conflict among the courts of appeals concerning the Board's authority to require that all bargaining unit employees, and not just union members, be allowed to participate in union affiliation votes. Although that issue is not present here, the Court implicitly approved the Board's practice of giving binding effect to affiliation arrangements where they satisfy the following essential conditions:

> First, that union members have had an adequate opportunity to vote on affiliation. The Board ordinarily required that the affiliation election be conducted with adequate "due-process" safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy. Second, that there was substantial "continuity" between the pre- and postaffiliation union. The focus of this inquiry was whether the union retained local autonomy and local officers, and continued to follow established procedures. If the organizational changes accompanying affiliation were substantial enough to create a different entity, the affiliation raised a "question concerning representation" which could only be resolved through the Board's election procedure. However, as long as continuity of representation and due process were satisfied, affiliation was considered an internal matter that did not affect the union's status as the employees' bargaining representative, and the employer was obligated to continue bargaining with the reorganized union.

Id. at 199–200 (footnotes and citations omitted). See also *Minn-Dak Farmers Cooperative*, 311 NLRB 942, 944–945 (1993), enfd. 32 F.3d 390 (8th Cir. 1994); *Central Washington Hospital*, 303 NLRB 404, 413 (1991). The burden to demonstrate that a question of representation exists rests with the party seeking to avoid an otherwise binding bargaining obligation. *Minn-Dak*, supra, 311 NLRB at 945.

2. The due-process issue

Applying the *Seafirst* standard to the facts of this case, I find that Respondent failed to meet its burden of showing that the affiliation was accomplished without adequate due-process safeguards.

Respondent complains that the actions of the bargaining unit employees immediately following the affiliation vote of February 11 demonstrate that the vote did not reflect their desires. The outcome of this vote, Respondent argues, was inaccurate because the employees received insufficient notice of the vote and were not adequately apprised of the consequences of their vote before casting their ballots.

Contrary to Respondent's contentions, I find that the employees received adequate notice of the proposed affiliation. Employees in attendance at the regular WFU meetings were told that the executive board was considering affiliation with the UAW as early as December, 2 months before the February 11 affiliation meeting. All bargaining unit employees received mailed notice of the affiliation vote almost 3 weeks in advance of the scheduled meeting. This letter was also posted in the workplace. If an employee missed the significance of the executive board's letter, Respondent's subsequent letter, mailed to employees several days prior to the vote, further alerted employees to the importance of the vote. The notice clearly stated that a secret ballot would be taken at the meeting to determine whether to affiliate with the UAW. Claims that this notice was confusing because the notice alluded to merely considering the affiliation question are, in my judgment, ground on a misreading, perhaps deliberate, of the notice in its entirety. Quite clearly, Respondent's correspondence with its employees reflects an understanding that an affiliation vote would be taken at the February 11 meeting.

I am likewise satisfied that the employees had an adequate opportunity to discuss and consider the affiliation matter before casting their ballots. Even though agendas were not posted for the December and January meetings, employees in attendance were allowed to discuss the affiliation. In addition, the employees discussed the affiliation extensively on the shop floor before the vote was held.[14] By inviting Klingfus and the other UAW officers to the February 11 meeting, the executive board insured that the greatest number of employees would benefit from hearing his explanation of the affiliation. The employees were given ample opportunity to ask questions of Klingfus and the executive board before voting. While the dissident employees may have been disappointed that their perspective was not shared by the others, they had sufficient time to make their opposition known before the vote was taken. Serwa, at the least, knew that affiliation was being considered months before the affiliation meeting and voiced his opposition no later than the January meeting. Kashuba and the others could have taken actions between their receipt of the notice and February 11. That relatively few employees voiced their opposition at the affiliation meeting is of no importance so long as there was equal opportunity for all employees to ask questions. "What is relevant in these situations is whether there was sufficient *opportunity* for discussion, rather than the actual extent and substance of the discussion." *State Bank of India*, 262 NLRB 1108, 1108 (1982) (emphasis in original). In short, Respondents cannot recharacterize their dissatisfaction with the direction of the discussion of the affiliation into a due-process deficiency.

Respondent does not argue that the balloting itself lacked due-process safeguards. The employees voted in private, there were adequate protections against ballot stuffing, voter eligibility was verified, and there were no irregularities in the tallying of the votes. As noted, the final vote reflected 79 employees in favor of affiliation and 51 opposed.

Finally, Respondent argues that the vote does not reflect the desire of a majority of the bargaining unit employees. However, the Board has long held that a successful affiliation vote does not require a majority vote of the entire membership and may not be attacked because members choose not to participate in the voting process. See *Minn-Dak*, supra, 311 NLRB at 945; *Central Washington*, supra, 303 NLRB at 414. No evidence here even suggests that the executive board or any UAW official did anything to inhibit employees or members from casting a ballot in connection with the affiliation question. On the contrary, the executive board specifically scheduled the affiliation meeting on a Sunday to allow for maximum employee participation. Moreover, the WFU's decision to not limit the affiliation vote to WFU members but extend it to all bargaining unit employees "would seem to afford, if anything, a greater degree of certainty on the only question relevant to the Respondent—that of the Union's continued majority status." *Minn-Dak*, supra, 311 NLRB at 947.

[14] Holubar acknowledged much discussion of the affiliation among the employees on the shop floor after receiving the notice. Serwa testified that he answered questions of his coworkers before the vote.

3. The continuity issue

I further find that Respondent has failed to show that the WFU's affiliation with the UAW resulted in a dramatically altered postaffiliation union such that it lacked substantial continuity with the preaffiliation WFU. No strict checklist is used to determine whether an affiliation causes such sufficiently dramatic changes. Rather,

> [t]he Board considers the "totality of a situation." Continuity is evidenced by the maintenance of trace of a preexisting identity and autonomy over the day-to-day administration of bargaining agreements.

Central Washington, supra, 303 NLRB at 413–414, quoting *May Department Stores v. NLRB*, 897 F.2d 221 (7th Cir. 1990).

At the outset, I conclude on the basis of the above findings that the executive board of the WFU acted within the scope of their authority in placing the affiliation matter before the employees for consideration on February 11. The claims made here that the approval by the employees created, in effect, two competing organizations lacks merit. Instead, one organization existed at all times notwithstanding claims by dissidents that the WFU continued to exist in an unaltered form following the action on February 11.

Otherwise, Respondent relies chiefly on its speculative interpretation of the UAW constitution and its presumed effect on the postaffiliation WFU. The UAW constitution, argues Respondent, removes the postaffiliation WFU's authority to control when it strikes, its ability to control its shape and direction, and its ability to modify its dues structure. Following *Seafirst*, however, the Board has declined to accord "more weight . . . to the sterile words of the governing documents of [the international and newly-affiliated local] than the manner in which they operate on a day-to-day basis and are allied to each other." Id. at 415. See also *Seattle-First National Bank v. NLRB*, 892 F.2d 792, 799 (9th Cir. 1990), cert. denied 110 S.Ct. 2618 (1990); *Minn-Dak*, supra, 311 NLRB at 947.

The executive board which conducted the WFU's affairs remained largely intact following the affiliation and chartering of Local 2340. Only a single new position—that of recording secretary—was created, although no testimony indicated that this was a direct result of the affiliation. Local 2340 adopted new bylaws several months following the affiliation and members are now required to pay the minimum amount of dues required by the UAW. The funds owned by the preaffiliation WFU remain under the possession of Local 2340. The evidence establishes that the officers of Local 2340 continue to be responsible, as they were with the WFU, for the day-to-day contract administration and grievance processing as well as the formulation of proposals for, and the negotiation of, any successor agreement. The UAW's responsibilities with regard to the collective-bargaining agreement are limited to providing advice if requested by Local 2340. In sum, Respondent failed to show that responsibility for the administration of the collective-bargaining agreement or the local union affairs shifted from the hands of the local members to the international.

To be sure, the affiliation here resulted in a dues increase and a restructuring of the organic documents governing the local union's affairs to conform to the UAW's constitution. As to the former, employees were likely aware of that aspect of the affiliation agreement when they voted on February 11. Although some protested concerning the dues increase, no evidence indicates that the postaffiliation opposition was grounded on the fact that employees were misled concerning the impact of affiliation on their dues. As to the latter, it is reasonable to assume that employees likewise knew that conformance to the UAW constitution would be the natural result of affiliation with the UAW. In any event, there is no showing that this action fundamentally altered the conduct of the day-to-day affairs of the local union organization. Accordingly, I find that Respondent has shown that only limited and anticipated changes in the structure of the certified representative flowed from this affiliation, not the dramatic and substantial changes envisioned by the Board as it has interpreted the Court's *Seafirst* decision.[15] Accordingly, Respondent has failed to meet its burden of showing that the affiliation did not preserve continuity between the preaffiliation WFU and the postaffiliation Local 2340.

Finally, no support exists for Respondent's apparent claim that authority to call strikes passed from the members to the UAW officials. The UAW constitution clearly provides that the unit employees must vote by a two-thirds majority to authorize an official of that organization to call a strike. Although approval of strike action voted upon locally must now be approved by the International union, these restrictions appear designed in the main to assure the lawfulness of strike action and access to the UAW's strike insurance fund. I find these changes to be of little significance to the overall question of continuity and consistent with the establishment of the affiliated arrangement between the certified representative here and the UAW.[16]

For the foregoing reasons, I find that Respondent violated Section 8(a)(1) and (5) by refusing to recognize Local 2340 as the certified bargaining unit representative following its affiliation with the UAW as charged in the complaint.

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[15] This case is clearly distinguishable from *Western Commercial Transport*, 288 NLRB 214 (1988), cited extensively by Respondent. In that case, the independent union officials virtually ceased to function in any representative capacity following the affiliation. Instead, administration of the collective-bargaining agreement was turned over to a staff official of the new organization and the control of local union affairs were, in effect, ceded to an intermediate body for assignment as it saw fit. By contrast, the local officers here remain responsible for local affairs and merely conformed the local organization to the requirements of the UAW constitution consistent with its affiliated status.

[16] Respondent's reliance on *Newell Porcelain Co.*, 307 NLRB 877 (1992), offers no respite from its refusal to bargain. There, in "unusual circumstances," the Board found an employer was not obligated to bargain with a certified bargaining representative where, following a local union's affiliation with an international, the union insisted on a clause recognizing the international as the exclusive bargaining representative. Notably, the employer's objection was not with the affiliation—which it immediately acknowledged—but with the union's insistence that it bargain directly with the international. The Board found that this would have violated Sec. 8(a)(2). Id. at 878. Here, neither the UAW nor Local 2340 has asked that Respondent do anything other than fulfill its statutory and contractual duty to bargain with the certified representative of the bargaining unit.

CONCLUSION OF LAW

By refusing to recognize and bargain with Local 2340 as the representative of its employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The recommended Order requires Respondent to affirmatively recognize and bargain with UAW Local 2340, on request, as the representative of its production and maintenance employees in the unit described in its most recent collective-bargaining agreement with the WFU. I have included an affirmative bargaining order in the remedy based on the Board's recent decision in *Caterair International*, 322 NLRB No. 11 (Aug. 27, 1996). Although a sizable number of employees have expressed their displeasure with the affiliation, Local 2340 remains the certified bargaining representative of the employees. A bargaining order here is necessary because "an unlawful refusal to bargain deprives all unit employees, whether or not predisposed to support the process of collective bargaining through a union, of a fair opportunity to assess what their particular 9(a) representative can still accomplish for them through that process. A reasonable period of time for bargaining insulated from decertification efforts restores that opportunity." Id. at 4. Although the General Counsel makes no claim that Respondent engaged in other unfair labor practices, the evidence here demonstrates the Respondent, in addition to refusing to recognize Local 2340, openly supported the activities of the dissident group. Such support would have a tendency to undermine the legitimacy of the affiliation action lawfully taken here and promote instability in the bargaining process. Hence, I am satisfied that Local 2340 is entitled to a reasonable period in which to bargain with Respondent free from further interference.

In addition, the refusal to recognize Local 2340 occurred during a contract term. This agreement provides for dues checkoff where authorized by the individual unit employee. Although some evidence indicates that the change in the dues structure following the affiliation was not honored, the record is unclear as to what actually occurred. For this reason, the recommended Order requires Respondent to reimburse Local 2340 for dues which it was lawfully entitled under the collective-bargaining agreement. Respondents are entitled to offset any dues payments made to Local 2340 by individuals as well as those dues transmitted to the UAW following the affiliation and transferred to Local 2340. *Ogle Protection Service*, 183 NLRB 682 (1970). Determination of the amounts due, if any, is left to the compliance stage of this proceeding.

Finally, Respondent is required to post the applicable notice to employees attached hereto.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Miller Waste Mills, Inc., d/b/a RTP Company, Winona, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 2340 International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as the exclusive collective-bargaining representative of employees in the following appropriate unit:

> All production and maintenance employees of Miller Waste Mills, Inc., d/b/a RTP Company, excluding office and clerical employees, engineering department employees, draftspersons, laboratory employees, plant clerical employees and all guards and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with Local 2340 International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as the representative of employees in the appropriate unit describe above in 1(a).

(b) Reimburse Local 2340 International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW for any dues it failed to check off and remit pursuant to the most recent collective-bargaining agreement with the Winona Free Union following the affiliation of those two labor organizations on February 11, 1996, as specified in the remedy section of the administrative law judge's decision in this case.

(c) Post at its Winona, Minnesota facility copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."